

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ELIZABETH W.,

Plaintiff,

v.

Civil Action No.
6:23-CV-1017 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

OFFICE OF PETER W. ANTONOWICZ
148 West Dominick Street
Rome, NY 13440

PETER W. ANTONOWICZ, ESQ.

FOR DEFENDANT

SOCIAL SECURITY ADMIN.
OFFICE OF GENERAL COUNSEL
6401 Security Boulevard
Baltimore, MD 21235

KRISTINA D. COHN, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security ("Commissioner"), pursuant to 42 U.S.C.

§§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on January 15, 2025, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

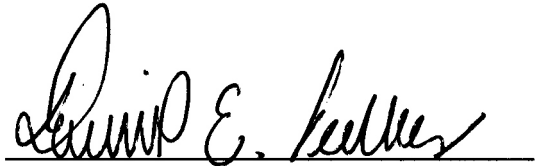
ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff was not

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order, once issue has been joined, an action such as this is considered procedurally as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: January 16, 2025
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
ELIZABETH W.,

Plaintiff,

vs.

6:23-CV-1017

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----x

Transcript of a **Decision** held during a
Telephone Conference on January 15, 2025, the
HONORABLE DAVID E. PEEBLES, United States Magistrate
Judge, Presiding.

A P P E A R A N C E S

(By Telephone)

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1 (The Court and all counsel present by
2 telephone.)

3 THE COURT: So the first issue I should raise with
4 you just to be sure, Attorney Antonowicz, is the question of
5 consent. When this case was initially filed, it was referred
6 to Magistrate Judge Thérèse Wiley Dancks. The consent form
7 that was filed as Docket Number 4 specifically consented to
8 her jurisdiction to hear and decide the case. When the case
9 was transferred to me, there was a docket entry that required
10 the plaintiff to notify the court if consent was being
11 withdrawn based upon the transfer. There was no such
12 notification, but I wanted to ensure, do you consent to my
13 hearing and deciding this case?

14 MR. ANTONOWICZ: Your Honor, at the time that that
15 happened I was not under the effects of any medications, and
16 I did not object to you being assigned and I still don't
17 object to it.

18 THE COURT: Thank you. Plaintiff has commenced
19 this proceeding pursuant to 42 United States Code Sections
20 405(g) and 1383(c)(3) to challenge an adverse determination
21 by the Commissioner of Social Security finding that she was
22 not disabled at the relevant times and therefore ineligible
23 for the benefits sought.

24 The background is as follows: Plaintiff was born
25 in July of 1988, she is currently 36 years of age. She

1 stands 5 foot 9 inches in height and weighs approximately
2 225 pounds. Plaintiff has lived in Wampsville, New York
3 since approximately December of 2020 with a fiancé. She has
4 two children that were born in May of 2018 and January of
5 2023. The father of those children apparently is deceased.
6 She receives help caring for the children from her father.
7 Plaintiff is a high school graduate, she was in regular
8 classes while in high school. She also has approximately two
9 years of college education, and has taken an auto service
10 course. She is right-handed. Plaintiff stopped working in
11 January of 2018, at the time she was pregnant. In the past
12 she has worked as a cashier and assistant store manager, a
13 cook, dishwasher, housekeeper, and manual farm laborer.

14 Physically, plaintiff suffers from multiple
15 impairments including obesity, polyarthropathy, lumbar
16 degenerative disc disease, cervical degenerative disc disease
17 with radiculopathy, bilateral carpal tunnel syndrome, and
18 status post-hernia repair which occurred in February of 2020.
19 She has also been diagnosed and treated for hyperlipidemia
20 and hyperthyroidism, but as the administrative law judge
21 concluded in this case, they are not sufficiently severe to
22 impair -- severe to impair her ability to perform work
23 functions.

24 Mentally, plaintiff suffers from depressive
25 disorder, anxiety disorder, post-traumatic stress disorder,

1 obsessive compulsive disorder, panic disorder. She has been
2 treated but not received any psychiatric hospitalization.
3 Plaintiff's activities of daily living including the ability
4 to dress, groom, bathe, cook, clean, do laundry, shop, drive
5 although she does not take public transportation, care for
6 her children, watches television, she listens to music, she
7 reads, and she enjoys working with beads.

8 Procedurally, this case was filed -- this case
9 emanated from applications for Title II and Title XVI
10 benefits protectively filed on April 5, 2021, alleging a
11 disability onset date of January 31, 2018. At page 370 of
12 the Administrative Transcript she claimed disability based on
13 spinal stenosis, degenerative disc disease, osteoarthritis,
14 anxiety, and depression. A hearing was conducted on
15 December 13, 2022, by Administrative Law Judge Jennifer Gale
16 Smith, at which a vocational expert also testified.
17 Administrative Law Judge Smith issued an adverse
18 determination on April 6, 2023. That became a final
19 determination of the Agency on June 29, 2023 when the Social
20 Security Administration Appeals Council denied plaintiff's
21 application for review. This action was commenced on
22 August 21, 2023, and is timely.

23 In her decision, ALJ Smith applied the familiar
24 five-step sequential test for determining disability.

25 At step one, she concluded that plaintiff had not

1 engaged in substantial gainful activity since January 31,
2 2018. She did note for purposes of Title II benefits that
3 plaintiff was last insured on December 31, 2023.

4 Plaintiff suffers, according to the administrative
5 law judge, from several severe impairments that impose more
6 than minimal limitations on her ability to perform basic work
7 functions, including obesity, inflammatory polyarthropathy,
8 lumbar degenerative disc disease, cervical degenerative disc
9 disease with radiculopathy, carpal tunnel syndrome, status
10 post-hernia repair, depressive disorder, anxiety disorder,
11 and post-traumatic stress disorder.

12 At step three she concluded that none of those
13 impairments meet or medically equal any of the listed
14 presumptively disabling conditions set forth in the
15 Commissioner's regulations, specifically considering Listings
16 1.15, 1.18, 12.04, 12.05, and 12.06.

17 After surveying the record, the administrative law
18 judge next concluded that notwithstanding her limitations,
19 plaintiff retains the ability to perform light work with
20 various additional limitations both addressing her physical
21 and her mental conditions.

22 At step four, she concluded that plaintiff is
23 incapable of performing her past relevant work which was
24 characterized as general farmworker, cashier, assistant
25 manager, cook, and dishwasher.

1 At step five, with the aid of a vocational expert
2 testifying concerning the hypothetical that was presented
3 mirroring the RFC, the ALJ concluded that plaintiff is
4 capable of performing work available in the national economy
5 and cited as representative occupations those of marker,
6 office helper, and inspector hand packager, and therefore
7 concluded that plaintiff was not disabled at the relevant
8 times.

9 As the parties know, the standard that the court
10 must apply is extremely deferential. I must determine
11 whether correct legal principles were applied and the
12 resulting determination is supported by substantial evidence.
13 The Second Circuit has addressed this standard, most notably
14 in *Brault v. Social Security Administration Commissioner*, 683
15 F.3d 443, Second Circuit, 2012, and reiterated more recently
16 in *Schillo v. Kijakazi*, 31 F.4th 64, Second Circuit 2022.

17 The plaintiff raises two essential contentions in
18 support of her challenge to the determination of the Agency.
19 She challenges the evaluation of medical opinions in the
20 record, including the administrative law judge's reliance on
21 prior administrative medical findings of state agency
22 physicians. The focus of the plaintiff's arguments appears
23 to be on her physical capabilities to perform work. And
24 secondly, she challenges the evaluation of the administrative
25 law judge concerning plaintiff's subjective reports of

1 symptomology.

2 When it comes to evaluation of medical opinions,
3 that is governed by regulations which took effect for
4 applications filed after March 27, 2017, and under those
5 regulations, the Commissioner will not defer or give any
6 specific evidentiary weight, including controlling weight, to
7 any medical opinions, including those from medical sources,
8 but instead must consider whether they are persuasive by
9 primarily considering whether the opinions are supported by
10 and consistent with the record in the case. 20 C.F.R
11 Sections 404.1520c and 416.920c. An ALJ must explicitly
12 state how persuasive he or she finds all of the medical
13 opinions and explain specifically how the factors of
14 supportability and consistency were considered.

15 The Second Circuit has noted that, first of all, if
16 there is an error in applying these new regulations, the
17 court must make a searching review of the record to determine
18 whether it is harmless and whether the rules were in fact
19 abridged. *Loucks v. Kijakazi*, 2022 WL 2189293 from the
20 Second Circuit, 2022, and *Estrella v. Berryhill*, 925 F.3d 90
21 from 2019, Second Circuit. And of course it is well
22 established that in the end, the determination concerning the
23 weighing of medical evidence is for the administrative law
24 judge in the first instance and not a function for the court.
25 *Veino v. Barnhart*, 312 F.3d 578, Second Circuit, 2002.

1 In this case, one of the two major focuses of
2 plaintiff's argument is on prior administrative findings by
3 Dr. C. Krist from September 16, 2021, that appears at 85 to
4 118 and 692 to 694 of the Administrative Transcript, and
5 Dr. Gregory Zito on reconsideration from March 17, 2022
6 appearing at 119 to 158 and 886 to 888 of the record. Those
7 were discussed by Administrative Law Judge Smith at page 28
8 of the Administrative Transcript, and she found them both to
9 be persuasive. The plaintiff claims that incomplete files
10 were reviewed by those physicians and that because of the
11 lapse in time, it was error to rely on them. That is -- the
12 Second Circuit has made it clear in *Camille v. Colvin*, 652
13 F.App'x 25, Second Circuit 2016 at specifically footnote 4,
14 that there's no unqualified rule concerning the lapse of time
15 between the existence of the prior administrative medical
16 finding and the ALJ's decision, the focus is on whether there
17 is room to doubt that the opinion is still valid because
18 there has been deterioration of the plaintiff's condition.
19 *Kidd v. Commissioner of Social Security*, 2019 WL 1260750 from
20 the Western District of New York, 2019.

21 Contrary to plaintiff's claim, Dr. Krist and
22 Dr. Zito both reviewed comprehensive records that included
23 the August 2021 MRI results which are in the record at 898 to
24 900, and the nerve conduction and EMG studies which are at
25 828 to 829. Dr. Krist referenced those at page 97 of the

1 Administrative Transcript, Dr. Zito referred to them at 134
2 of the Administrative Transcript.

3 When it comes to the question of deterioration,
4 there is no evidence whatsoever that there was significant
5 deterioration from the time of that testing. The July 14,
6 2022 cervical MRI specifically noted no significant change
7 from August 2021 MRI. That's at 904 to 905 of the
8 Administrative Transcript and also 894.

9 It is well established that it is proper to rely on
10 prior administrative medical findings if they are supported,
11 and that they can supply substantial evidence supporting a
12 resulting determination. *Woytowicz v. Commissioner of Social*
13 *Security*, 2016 WL 6427787, Northern District of New York,
14 October 5, 2016, that report and recommendation was adopted
15 on -- at 2016 WL 6426385, October 28, 2016.

16 So I don't find any error, I think that there was a
17 proper assessment by the administrative law judge of the
18 opinions of Dr. Krist and Dr. Zito. She gave three reasons
19 why she found them to be proper. One, they are supported by
20 a review of relevant objective medical evidence such as MRIs,
21 x-rays, and EMG and findings set forth in the report. Two,
22 adding to the persuasiveness of the opinions are the
23 reviewer's familiarity with the Agency's disability programs,
24 policies, and evidentiary requirements, and the fact that the
25 purpose of the review was to render a medical opinion on

1 disability using the Agency's criteria. And three, in
2 addition, the finding that the claimant is capable of
3 performing a reduced range of light work is consistent with
4 the care claimant provides to her children, vacuuming, doing
5 laundry, and cooking, that's at page 28 of the Administrative
6 Transcript.

7 The plaintiff has focused on some records, medical
8 records that show that her gait is not regular, reduced
9 ranges of motion and so forth. As the Commissioner's argued,
10 while there may be some indications of that, the overwhelming
11 reports from medical treatment providers is that she has a
12 regular gait. And I went through carefully the records and I
13 found that notation at 669, 684 to 687 -- I'm sorry, that's
14 the nerve conduction study. 690 to 691 -- no, that's the
15 MRI. 704, 710, 715, 894, 899, 904 -- I'm sorry, 899. I
16 found that those were treatment providers that noted that
17 plaintiff had a regular gait.

18 So the test that I have to apply is whether a
19 reasonable fact finder would have to conclude otherwise than
20 the administrative law judge, and I can't say that with
21 regard to the weighing of those two medical opinions.

22 The other opinion that is challenged is the opinion
23 from plaintiff's treating nurse practitioner, Maureen
24 Schroettner, and that appears at 1087 to 1088 of the
25 Administrative Transcript. It is completely debilitating.

1 For example, it states that plaintiff can only lift 5 pounds
2 or less. She can only sit, stand, and/or walk for one hour
3 or less in an eight-hour workday. She can never climb,
4 balance, kneel, crouch, crawl, or stoop. She will be off
5 task more than 50 percent of the time and absent more than
6 four days per month. There is no significant explanation to
7 supplement and explain these findings. The administrative
8 law judge addressed the opinion at page 29 and found it not
9 to be persuasive, found that the activities of daily living
10 and treatment record don't support it, the extent of the
11 limitations is not supported by testing, and claimant had a
12 full painless range of motion at both hips and the
13 plaintiff's lumbar range of motion was only minimally
14 limited, that's by reference to an SOS treatment note, and so
15 she found the opinion not to be persuasive.

16 I don't find any error. In the end, what plaintiff
17 seeks is a reweighing of the medical evidence and that's, as
18 I said before, not something that is properly the function of
19 the court.

20 Turning to the assessment of plaintiff's
21 symptomology, obviously an ALJ must take into account
22 plaintiff's subjective complaints when going through the
23 five-step disability analysis, but it's not required to
24 blindly accept the subjective testimony of a claimant.
25 *Genier v. Astrue*, 606 F.3d 46, Second Circuit 2010. Instead,

1 the ALJ must make an assessment looking to the factors set
2 forth in Social Security Ruling 16-3p. Significantly, the
3 ALJ's assessment of an individual's subjective complaints
4 regarding her pain and other symptoms is entitled to
5 substantial deference by a reviewing court. *Aponte v.*
6 *Secretary of Department of Health and Human Services*, 728
7 F.2d 588, Second Circuit, 1984; *Shari L. v. Kijakazi*, 2022 WL
8 561563, from the Northern District of New York,
9 February 24th, 2022; and *Edward J. v. Kijakazi*, 2022 WL
10 4536257, Northern District of New York, September 28, 2022.

11 And of course when it comes to the burden of proof,
12 it is clearly and squarely upon the plaintiff through step
13 four of the sequential analysis. *Poupore v. Astrue*, 566 F.3d
14 303, Second Circuit 2009. The administrative law judge in
15 this case carefully reviewed, and in some detail, the medical
16 history in this case, did a proper analysis of the medical
17 opinions in this record, and found that the plaintiff did not
18 carry her burden of proving greater limitations, focusing,
19 among other things, on her claims being inconsistent with her
20 activities of daily living, her ability to manage and care
21 for her children, and the objective findings and treatment
22 notes. I find that the plaintiff's symptomology was properly
23 analyzed by the administrative law judge pursuant to SSR
24 16-3p, and so I find no error in that regard.

25 In sum, I find that the correct legal principles

1 were applied in this case and the resulting determination is
2 supported by substantial evidence and I grant judgment on the
3 pleadings to the defendant and order dismissal of plaintiff's
4 complaint.

5 Attorney Antonowicz, I sincerely hope that your
6 condition improves and that you return to good health, and I
7 wish both of you a happy new year and all the best for 2025.
8 Thank you.

9 MR. ANTONOWICZ: Thank you, your Honor.

10 MS. COHN: Thank you.

11 COURTROOM DEPUTY: Court is adjourned.

12 (Proceedings Adjourned, 11:31 a.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RMR, CRR, CSR, Federal
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District of New York, DO HEREBY CERTIFY that
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Dated this 15th day of January, 2025.

/S/ JODI L. HIBBARD

JODI L. HIBBARD, RMR, CRR, CSR
Official U.S. Court Reporter